IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 2358 OF 2003

IN

SUMMARY SUIT NO. 362 OF 2000

Smt. Sumitra D. Shah .....**Plffs.**
vs.
M/s. Gemini Steel Centre
and Ors. .....**Defnds.**
AND
Smt. H.M. Shah ...Respondent
AND
Sheriff of Bombay ...Respondent
AND
Krunal N. Gandhi ..Prop.Applicant

B.N. Vaishnawa i/b. Bhanet Vaishnawa and Co.
for the plaintiffs to show cause.
Vivek Kantawala i/b. Kantawala and Co.
for the applicants in suuport of N/M.

CORAM: S.U. KAMDAR, J.

DATE : 18th January,2006.

P.C. :.

1. In the present notice of motion the petitioner is seeking that the order dated 26.6.2003 passed by

Bobde, J in Notice of Motion No. 1114 of 2001 in Summary Suit No. 362 of 2000 be modified and/or varied in favour of the petitioner and the Court Receiver, High Court, Bombay should be directed to take only formal possession of the suit premises and that the applicant should be permitted as agent of the Court Receiver without payment of security and/or royalty.

2. The claim of the applicant is bases on a tenancy agreement dated 8.7.2002 which is at Ex.A to the Affidavit in support. By this agreement the applicant is claiming to have acquired the tenancy right from Shri Mahalaxmi Vahuji Mandir Trust. The said agreement is admittedly of 8.7.2002. However prior thereto in a Notice of Motion no. 467 of 2000 by an order dated 22.2.2001 the said premises are already attached. Pursuant to the said order an attachment was levied by executing the warrant of attachment on 1.3.2000. The report of the Sheriff of Mumbai dated 1.3.2000 is annexed at Ex,.P.1. to the Affidavit in reply to the present notice of Motion.

3. In view of the aforesaid I am of the opinion that the claim made by the applicant on the basis of tenancy agreement dated 8.7.2002 cannot be accepted. When the tenancy agreement was entered into, the property was already attached and therefore the tenancy agreement dated 8.7.2002 is prima-facie void ab-initio and non-existence since attached property cannot be dealt with by creating tenancy rights therein. In view thereof there is no substance in the present notice of Motion. Motion dismissed. No order as to costs.

4. The present order is stayed for a period of three weeks.

(S.U.KAMDAR,J)